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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 26th November 2024

S.R.O. No. 643/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th October 2024 passed in the I.D. Case No. 23 of 2018 [under Section 2-A(2)] passed by the Presiding Officer, Labour Court, Bhubaneswar on the industrial dispute between the President-Finance, M/s SHARP Business Systems (India) Pvt. Ltd., Plot No. 9, 3rd Floor, BITS Tower, Sector-125, Noida, U.P.-201301, 2. Corporate (HR), M/s SHARP Business Systems (India) Pvt. Ltd., Plot No. 9, 3rd Floor, BITS Tower, Sector-125, Noida U.P.- 201301 and Shri Bipin Bihari Mohanty, Age 56 yrs., S/o- Late Iswar Chandra Mohanty, E-91, GGP Colony, Rasulgarh, Bhubaneswar-751029, Odisha is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 23 of 2018 [under Section 2-A(2)]

Dated the 28th October 2024

Present :

Smt. Aparna Mohapatra,
Presiding Officer,
Labour Court, Bhubaneswar.
[JO CODE-OD-0408]

Between :

1. The President-Finance, . . First Party—Managements.
   M/s SHARP Business Systems (India) Pvt. Ltd.,
   Plot No. 9, 3rd Floor, BITS Tower,
   Sector-125, Noida, U.P.-201301.
2. Corporate (HR),
   M/s SHARP Business Systems (India) Pvt. Ltd.,
   Plot No. 9, 3rd Floor, BITS Tower,
   Sector-125, Noida, U.P.- 201301.

And

Shri Bipin Bihari Mohanty, aged about 56 yrs., . . Second Party—Workman.
S/o Late Iswar Chandra Mohanty,
E-91, GGP Colony, Rasulgarh,
Bhubaneswar-751029, Odisha.

Appearances:

Shri Susant Das & Associate, Advocates. . . For the First Party—Managements.

Shri Subrat Mishra & Associates, Advocates. . . For the Second Party—Workman.

AWARD

Challenging the illegal and unjustified action of the first party managements in terminating him from service with effect from the 31st January 2018, the second party disputant has moved the present application under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act or I.D. Act') for his reinstatement in service with full back wages and all other consequential service benefits.

2. Concisely, the case of the second party is that on being appointed as an 'Area Sales Manager' by the management No.1, he joined as such on the 18th April 2016 at Bhubaneswar office of the managements with a monthly salary of Rs. 42,678 . While continuing as such, he was called for explanation as to why disciplinary action should not be taken against him by way of show cause notice, dated the 17th January 2018 on the allegation of committing certain misconducts.The second party, thereafter requested the managements to supply Conduct Rules for above purpose, but instead, the managements terminated him from service illegally and arbitrarily with effect from the 31st January 2018. According to the second party, his termination is not a termination *simpliciter,* but a punitive one.

In his statement of claim, the second party disputant asserted that he is coming within the purview of 'workman' under Section 2(s) and the organisation of the first party managements is an 'industry' as defined in Section 2(j) of the Act. The further assertion of the second party is that being aggrieved by the action of the managements, he raised a dispute before the D.L.O., Khurda. But, as the dispute could not be resolved by the labour machinery within the stipulated period of forty-five days, he filed the present application under Section 2-A(2) of the I.D. Act before this Court directly for adjudication.

3. In response to the claim statement of the second party, the management No.1 in its turn has filed written statement. While the fact of appointment of the second party as Area Sales Manager vide his letter of appointment, dated the 18th April 2016 issued by the management No.1 is admitted, his status as a 'workman' within the meaning of Section 2(s) of the I.D. Act is thoroughly challenged in the WS. Add to it, the WS of the management No.1 speaks that the duty assigned to the second party during his incumbency was managerial and administrative in nature. Further, he was drawing salary exceeding ten thousand rupees per mensem. On the above counts, the management No.1 with vehemence challenged the maintainability of the present case.

It is specifically averred in the WS that the second party was rightly terminated from his service while taking into consideration the terms contained in his contract of employment. However, the management No.1 in this connection categorically submitted that the service of the second party was not confirmed under it, rather he was under probation and as such in terms of contract the service of the second party was terminated reserving the right of 1st party management to pay 14 days salary in lieu of 14 days' notice. With the aforesaid backdrop, the management No.1 has prayed for the rejection of the claim of the second party.

The management No. 2 has contested the case without filing written statement.

4. The rival contentions of the parties emerge the following issues :—

ISSUES

(i) Whether the action of the first party managements in terminating the services of the second party with effect the 31st January 2018 is legal and/or justified ?

(ii) Whether the second party is coming under the definition of workman as defined under the I.D. Act ?

(iii) If not, what relief the second party is entitled to ?

5. Both parties adduced oral as well as documentary evidence in support of their pleadings. The second party while examined himself as WW No. 1 and marked certain documents under Exts. 1 to Ext. 6, one Manoj Singh is examined as MW No. 1 on behalf of the managements.The managements also placed reliance upon almost seven numbers of documents under Exts. A to Ext. G.

FINDINGS

6. *Issue No. (ii)*— As the instant issue relates to the question of status of the second party is taken up first for adjudication. It is an admitted fact that by virtue of Ext.1 (Xerox copy of the appointment letter, dated the 18th April 2016 of the second party) the second party was appointed as 'Area Sales Manager-ISG Business' having headquarters at Bhubaneswar. In the context, the learned counsel appearing for the managements during the course of argument emphasised that in view of the administrative and managerial nature of job performed by the second party during his service period being appointed as 'Area Sales Manager' and earning wages more than the wages fixed for a workman, he does not fall within the ambit of 'workman' as defined under the Act and consequently his grievance cannot be adjudicated in this forum being not maintainable. Assailing such arguments of the learned counsel for the managements, the learned counsel appearing for the second party in its turn has assiduously submitted that at no point of time the second party was entrusted with any managerial and administrative nature of duties as alleged. Rather, by nature of his duties the second party is coming within the defination of 'workman' as envisaged under Section 2(s) of the Act. As such, the learned counsel appearing for the second party set up a plea that the above arguments of the managements cannot be taken into consideration.

It is well settled that basing on the designation of an employee or the remuneration attached to such designation, the status of an employee cannot be decided. The determinative factor is the

main duties of the concerned employee and not some works incidentally done. So, in order to reach at a conclusion over the present issue in question, this Court has to peruse the evidence adduced by both the parties through oral as well as documentary evidence. As stated above, the second party in order to substantiate his case while placed reliance on eight numbers of documents, the managements on the other hand have also marked seven numbers of documents. But, it is a matter of dismay, that none of the documents (of both the parties) supports the above assertions as advanced by both the parties regarding the work performed by second party during his service tenure. However, the second party with regard to the present issue in dispute has drawn attention of the Court on the cross-examination of MW No. 1, who during his cross-examination at Para. 20 clearly stated that the disputant was the only person posted in Odisha on behalf of the managements and that he used to procure orders, placed indents, maintain the registers, orders and indents so also visit personally to the dealers and that he submits his report to the Regional Office of the management situated at Kolkata and that he has not filed any document that the second party disputant was entrusted and assigned with any independent managerial & supervisory power under the company of the management and that the second party chose the dealers, recommends his name to the Regional Head of the managements company to take final decision in appointing the dealers. The MW No.1 during his cross-examination at Para.12 also explicitly asserted that he used to guide the dealers and distributors to whom the second party recommends as far as the financial implication is concerned. Hence, in view of such categorical admission of MW No. 1, who is none other than the Accounts Manager of the managements, this Court is of the definite view that the second party involved in the present case in hand is a 'workman' coming under the purview of Section 2(s) of the Act as the managements failed to prove that the second party was ever having any managerial and administrative power while working under them although they have seriously disputed his status throughout the case record and consequently, the instant dispute is adequately maintainable.

The issue is answered accordingly against the managements.

7. *Issue No.(i)*— It is the positive case of the second party that as his service has been terminated without following the provisions of Section 25-F of the Act when he stated to have worked under the company of the managements from the 18th April 2016 to the 31st January 2018, the action of the managements in terminating him from service if viewing from any angle cannot be stated to be legal or justified. At this stage, it is trite to mention here that at no point of time, the managements have ever disputed the engagement period of the second party. Further, there is nothing on record from the side of the managements evidencing that the engagement of the second party was sporadic in nature, for which a presumption can be drawn to the effect that the engagement/appointment of the second party under the managements was continuous and uninterrupted one preceding the date of his termination. There is no serious dispute to the fact that the second party was terminated from his service w.e.f. the 31st January 2018 vide Ext. C. In this connection, the managements to prove their action to be legal, have taken a plea that the second party was rightly terminated from his service as the same has been effected as per the terms enumerated in his contract of appointment specifically Clause No. 15 of Ext. A (Xerox copy of the appointment letter of the second party and the same has been admitted into evidence without any objection from the side of the second party) which speaks as follows :—

"Your employment is subject to a probation period of six months from the date of his joining. You will be deemed to be on probation till we confirm you in service by way of a written letter. During the probation period this contract may be terminated at any time by either party by giving 14 days' notice in writing to the other, subject, however, to the Company's right to pay 14 day's salary in lieu of such notice to you".

Admittedly, no document is placed on behalf of the second party in the case in hand to show that any written letter was issued to him by the managements towards his confirmation of service. However, at the same time, it cannot be oversighted that no document is brought forward by the managements from which it could have revealed that the second party was given 14 days' notice or any payment was paid to him in lieu thereof. Rather, the termination letter of the second party marked vide Ext. C gives a clear picture that the second party was given only one day notice prior to his termination from service. Moreover, it is the settled principle of law that in order to claim protection of Section 25-F of the I.D. Act, the claimant has to prove that he had rendered continuous and uninterrupted service under his employer for a period of more than 240 days. As discussed above, it has already been held that the second party has worked continuously under the managements for the period from the 18th April 2016 to the 31st January 2018. Accordingly, the managements were under obligation to comply with the provisions of the Act while terminating the second party from his service.

On conspectus of the document marked vide Ext. C, it transpires that the second party was terminated from service w.e.f. the 31st January 2018 due to his poor performance. It is also forthcoming from Ext. B that the second party was also issued with show cause notice for committing certain alleged misconducts. But, there is nothing either oral or documentary from which an inference can be drawn that any enquiry was conducted against the second party for committing any misconduct and his termination was followed with the result of any enquiry. At this stage, it is apt to rely upon a decision of the Punjab & Haryana High Court, reported in LLR-1993-876 (Modella Woollens Ltd. *Vrs.* P.O. Labour Court), wherein it has been held that "No termination is permissible on the ground of misconduct unless proper inquiry is held according to principles of natural justice."

Considering the aforesaid discussions, the conclusion is inevitable that in spite of rendering continuous service for more than 240 days under the managements, the services of the second party have been terminated in clear contravention of the provisions of the Industrial Disputes Act, 1947. Accordingly, such action of the first party managements cannot be held to be either legal or justified.

This issue is answered accordingly.

8. *Issue No. (iii)*— In view of the above findings, the next question that arises for determination as to what relief the second party is entitled to. At this stage, it is felt proper to rely upon the decision of Hon'ble Apex Court in the case of Jagbir Singh *Vrs.* Haryana State Agriculture Marketing Board and another, in Civil Appeal No. 4334 of 2009 (Arising out of SLP No. 987/2009), reported in 2009 (4) LLJ 336 [SC], wherein the Hon'ble Court have been pleased to held that "if the termination of an employee is found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. But, compensation instead of reinstatement has been held to meet the ends of justice in

appropriate cases". Thus, keeping in view the principle laid down in the above case by the Hon'ble Apex Court, so also considering the present age and the length of service of the second party workman-i.e. from the 18th April 2016 to the 31st January 2018, this Court is of the humble opinion that the present managements are hereby directed to pay him (second party workman) a compensation of Rs. 3,00,000 (Rupees three lakhs) only in lieu of his reinstatement and back wages within a period of two months of the date of publication of this Award in the Official Gazette, failing which the amount of compensation would carry a simple interest @ 6% per annum till its realisation.

The application is disposed of accordingly.

Dictated and corrected by me.

APARNA MOHAPATRA
28-10-2024
Presiding Officer
Labour Court, Bhubaneswar

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Presiding Officer
Labour Court, Bhubaneswar

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By order of the Governor
NITIRANJAN SEN
Additional Secretary to Government

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